

BEFORE THE ASSEMBLY COMMITTEE ON CRIMINAL JUSTICE
APRIL 11, 2007

TESTIMONY OF TOM DAWSON

On 2007 Assembly Bill 8
Relating To Capturing An Image Of Nude Or Partially Nude Persons In Locker Rooms

THANK YOU, MR. CHAIR, AND MEMBERS OF THE COMMITTEE.

My name is Tom Dawson. I am a resident of Madison, Wisconsin.

Although I have testified before legislative committees in the past in my official capacity as an Assistant Attorney General, I appear here today solely in my capacity as a private citizen and on my own time. Although I believe they are shared, the views expressed here are my own, and are not made on behalf of anyone else.

Although I believe the sponsors of Assembly Bill 8 are well-intentioned to address a serious problem that is growing in this state, this country, and the world, this bill is terribly inadequate.

I am handing you my correspondence to AB 8 author, Representative Marlin Schneider, who I highly respect as an advocate for our privacy rights. I thank him for bringing this problem to the legislature's attention. I have also added to that packet a few more materials on the extent of the problem of using camera phones in locker rooms and other places where people have an expectation of privacy. My own personal experiences with the problem of cell phone use in the Madison West YMCA men's locker room are documented there. I'd like to remind you that many, if not most, locker rooms are available for use by both children and adults where our children can be vulnerable to photos taken with cell phones by adults or even other children.

I do not have time to review all the reasons I document why I believe AB 8 is not adequate. Suffice it to say, I believe the bill is largely unenforceable, provides inadequate penalties, and is out of touch with the reality of cell phone use and abuse in locker rooms – including the tension and potential serious threats of locker cell phone use to the privacy, security and peace of mind of our families and children.

AB 8 makes it illegal to capture and transmit images of nude and partially nude persons in locker rooms without their consent. I have no problem with these prohibitions and penalties – as far as they go. But penalizing the taking and transmission of unpermitted cell phone images probably is the least effective way to deal with this serious problem.

This is because in most cases the chances of detecting and catching people taking and transmitting these photos, or proving it was done without consent, are next to impossible. It is well-known and documented that the photo feature on a camera phone can be used without detection while speaking on or merely handling the phone. For this reason, the victims of surreptitious cell phone photo use are never aware that photos are being taken in the first place. There is no way for those in the

presence of a person using a cell phone to know whether it has a camera feature, or whether that feature secretly is being used by the user or handler. There is no way for victims to know when and where their images have been shared with others or posted on the world-wide web.

Proving that the victims of the photos did not give consent for the photos also usually will be impossible because the victims or their parents often never will be found. Photos of the victims, or just their body parts, will appear on the web without identification. Tracking down the person who posted the images on the web is equally difficult. For these reasons, the bill is largely unenforceable.

More and more people are aware of this problem, and they are confronting cell phone users in these settings -- in some cases risking abusive confrontations. Laws are needed to back up our families who reasonably demand their rightful privacy.

So what's the answer? The answer lies in prevention. AB 8 punishes those few who might get caught after they have violated the law, invaded our privacy, and posted our images on the world-wide web. The bill does little, and only indirectly, to deter or prevent the problem in the first place.

The answer lies in legislating what should be, but is not, common courtesy and the common sense policies of many, but not enough, gyms around the country. Those gyms ban the use -- and some better yet -- the presence of cell phones in locker rooms. Because we cannot tell whether cell phones have camera features or whether they are being used, and because most cell phones will one day have this feature, they have no more business being handled in a locker room than a still- or video-camera.

With voice mail and the short time that cell phone users spend in locker rooms, it is simply not too much to ask for them to put them away during that time.

In my materials I offer ideas for effective amendments to the bill. As a start, I ask you to amend AB 8 to make it a misdemeanor, punishable by a fine of \$100 for the first offense, to have a cell phone on or in sight in a locker room. A \$250 fine should be imposed for actual use in a locker room. Higher penalties, including confiscation and cell phone bans should be imposed on those who violate the law in the presence of children and for recidivists. Adequate posting of the cell phone ban should be required in locker rooms and their entrances. Emergency use of cell phones for medical, fire and related serious safety reasons should be excepted.

I believe that if these measures are enacted into law and locker rooms are posted, the law usually will be obeyed, gyms and locker room users will invoke it, and there will be little need for actual law enforcement intervention. Without such a law, however, locker room cell phone use will continue by ignorant, inconsiderate, rude, or deviant cell phone users.

In conclusion, cell phones are of great value and convenience. I own one. But cell phones simply don't belong in the locker room. Our own privacy, and that of our families and children, are far too important to yield to the mere inconvenience of foregoing a telephone call in a locker room.

Thank you.

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January 21, 2007

Representative Marlin Schneider
Room 204 North
State Capitol
P.O. Box 8953
Madison, WI 53708

Re: 2007 Assembly Bill 8 -- Locker Room Cell Phone Use

Dear Representative Schneider:

I thank you for your advocacy on behalf of privacy for Wisconsin citizens. Today's Wisconsin State Journal story on the sale of personal information by state agencies for commercial use is an example of the continuing need for your advocacy and the vigilance of Wisconsin citizens.

In particular, I thank you for your introduction of 2007 Assembly Bill 8 outlawing the capture of images of nude or partially nude persons in locker rooms, written policies on privacy in locker rooms, and for providing penalties. I support this bill. However, this bill is only a start, and warrants strengthening in several important respects.

With respect to AB 8, I do not believe the penalty of \$1000 fine and 90 days imprisonment is sufficient. The invasion of privacy this bill appropriately outlaws is one of the most egregious of its type, and should be met with most severe of sanctions. Given that the law already provides penalties of up to \$10,000 and imprisonment of up to five years in prison for similar violations in non-locker room situations, the penalties in locker room situations should be at least as severe as under present law. In addition, I ask that you consider amending the bill to provide enhanced penalties when the victim are minors, when the images are posted in public such as on the internet or web, and to allow the courts to award restitution to victims as a component of the criminal prosecutions, with a presumptive minimum of harm set at \$5000.00.

In addition, either AB 8 should be amended, or a separate bill should be introduced, to do the following. Subject to an exceptional situation involving a serious emergency (such as a medical emergency or fire), the bill should be amended to make it a misdemeanor to possess an unconcealed image capturing device or cell phone, or to use such devices or cell phones (with or without image-capturing capabilities), in locker rooms, regardless of whether nude images are taken, depicted, transmitted or reproduced. While I am not ready to advocate an outright ban on the mere presence of such devices in locker rooms, such devices should be both turned off and left in pockets, gym bags or other concealed places. Such a law is needed for several common

sense reasons, largely documented in my enclosed March 27, 2006, letter to the Madison West YMCA.

First, it is next to impossible to detect and prove that photos are being taken while cell phones and image-taking devices are being used, including in locker rooms, if the user wishes to conceal such activity. A person can be taking photos under the guise of holding a phone, answering or making a call, or speaking on a cell phone, without others knowing it is going on. Neither the present law nor AB 8 face up to this reality, and I fear they will be largely ineffective for this reason.

Second, there is no compelling reason for cell phones to be out, to be turned on, or to be used during the short time a person is in a locker room. Mere convenience does not justify the risk of photos being taken, or the anxiety and potential confrontation that the presence of such devices produce.

Third, many facilities with locker rooms already have common sense policies prohibiting the use of cell phones in locker rooms. However, as my March 27, 2006, letter attests, they are largely unknown, commonly and flagrantly violated, poorly administered and enforced, and because they are not backed by law are likely to lead to escalated serious and unnecessary confrontations. The law should back up these common sense policies with the force of law and end the debate about appropriate regulation and use such devices in locker rooms. The West YMCA has not taken my letter seriously, much to the risk of its members and its own civil liability. I am convinced that legislative action is necessary to convert what should be common courtesy into enforceable law.

As I indicate in my letter to the YMCA, I am not one to merely complain about a problem and expect others to solve it. My letter contains proposed measures to address the problem, and I am willing to work with your office and other legislators to draft common sense provisions to reasonably protect the privacy of the public, as well as the reasonable rights of cell phone users, of which I am one. A balance needs to be struck. Neither current law nor AB 8 bring us near that balance.

Thank you for your consideration. As I am a public employee, I ask that my above-provided work email and phone not be used during working hours, except during the lunch hour.

Sincerely yours,


Thomas J. Dawson

cc: West YMCA; Senator Fred Risser; Representative Terese Berceau
enclosure: March 27, 2006, letter from Thomas Dawson to Madison West YMCA

Thomas J. Dawson
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March 27, 2006

SENT CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Madison YMCA
Attention: Dan O'Brien, Executive Director
5515 Medical Circle
Madison, Wisconsin 53719

Re: Cell Phone Use in Locker Rooms

Dear Mr. O'Brien:

I am writing this letter to place the YMCA on notice of a serious problem that I believe warrants an effective response because it involves serious risks to the privacy and safety of YMCA members and staff, and current measures are not adequate to address those risks. The problem is continued unauthorized and unabated cell phone use in the men's (and perhaps the women's, boys, and girls) locker room.

Because of the well-recognized serious threat that camera phones present to the privacy of YMCA members, and the justified intolerance members have of the rule's violation and the risk of being photographed in nude or compromised positions, I believe there is a serious risk of physical altercations over unabated use. Although I have expressed my concerns to YMCA staff about this orally, I find it necessary to make it clear on the record that the YMCA is now aware of my concerns, and the facts that give basis to them.

Having provided this and the following information, I believe it is incumbent on the YMCA to take additional reasonable effective measures to prevent the use of these devices in the locker rooms. Due to the nature and significance of this matter, and the notice I am giving, I suggest that this letter be shared with YMCA's legal counsel, YMCA's liability insurer, and the YMCA Board.

Please let me be clear about the nature of this letter. It is in no way to be construed as a threat, such as of litigation, as one YMCA staffer incorrectly has interpreted my concern. As a faithful member of the YMCA since 1984, I intend, rather, to make the YMCA acutely aware of a serious problem, to provide the opportunity to address it, to prevent the rights and well-being of members and staff from being harmed in the future, and to prevent situations that could give rise to serious liability for the YMCA. In the interest of constructive ideas for accomplishing this, I also offer below my constructive ideas for consideration.

The seriousness of the issue is demonstrated in part by the fact that use of camera phones to photograph people in the nude in locker rooms is a federal crime under the Video Voyeurism Prevention Act of 2004, punishable by fine up to \$100,000 and/or up to one year in prison. The public is already acutely aware and concerned about the risks to their privacy from camera phone abuse, resulting in this first generation of legislation. There are documented reports of unauthorized photos taken of nude people in locker rooms posted on the web. There is a continuing need to do all that is reasonably possible to prevent such abuse, and the YMCA must stay ahead of the curve in this effort.

As you know, cell phone use in the YMCA locker rooms is prohibited. I compliment the YMCA for this policy and the reasons for it. There is one sign posted inside the door of the West YMCA men's locker room indicating this policy. I will comment on the adequacy of this posting later. Suffice it say, the policy is a correct and appreciated one because the difference between ordinary cell phones and camera phones, and the use of the camera feature in cell phones, can not be easily detected. The camera feature of such phones can be used while conversing on the phone without knowledge of others. Unfortunately, as least a significant number of camera phone users are ignorant of the growing number of policies and the common courtesy against cell phone use in locker or rest rooms. Many YMCA members are aware of this policy, the reasons for it, and justifiably demand strict adherence to it for the sake of their own privacy, their families' privacy, and that of their children.

Many West YMCA members and users of the locker room abide by this policy because they are either aware that cell phone use is prohibited in many, if not most, gym locker rooms, or because it is a common courtesy and responsibility that is owed to others by cell phone users. Others appreciate adherence to this courtesy and policy due to the illegal abuse that can be made of camera phones.

I have now personally witnessed in the last two months more than three instances of cell phone use in the West YMCA men's locker room, including with camera phones. Others have related to me use of camera phones in the locker rooms. Because I use YMCA facilities on an average of 12-15 evenings a month, I doubt I have been present for the only instances of cell phone use in the locker room. Given the relatively few days and hours I use the YMCA locker room, I can only conclude that my own experience demonstrates a relatively frequent problem at the Y. Nevertheless, regardless of the frequency of these violations, I believe any use of cell phones in the locker rooms is prohibited and intolerable, gives rise to a serious risk of intrusions of privacy and embarrassment, and can lead to physical altercations over the threat posed by their use and by the clear violation of the YMCA rule they demonstrate. If altercations occur, it would appear likely that YMCA staff could be drawn into them at their own risk.

In the last three of the cases I have personally witnessed, I have had to interrupt the violators use of the phone to inform the violators that cell phone use in the locker room is against YMCA rules, as posted. After all, it is only during cell phone use that we become aware

the policy is being violated, the risk to our privacy is imminently presented, and the opportunity to abate that risk can be lost if action is not immediately taken. The first violator complied with my request, apologized, and apology was amicably accepted without incident or report to the YMCA staff.

In two of those cases, however, the users became indignant and nearly belligerent. One violator insisted he was not aware of the rule or the posted sign, and demanded an apology from me after I told him that it is common knowledge and courtesy not to use cell phones in locker rooms. The other violator told me to mind my own business, and refused to give me his name so I could report him. The latter was clearly using a camera phone. Both refused to terminate their use of the phone upon my interruption and notice of the rule. I find these reactions ironic in that the violators owed me and the other members an apology, and it certainly was my business to protect my privacy and to insist on adherence to YMCA rules, especially this one. Nevertheless, so as not to escalate the verbal altercations, I disengaged from the exchanges, and informed desk staff of the incidents later. Because in the latter two cases I was vulnerably unclothed at the time and on the way to the shower, I was in no position to attempt further persuasion or immediately report these people to the front desk before they left without giving their names. I have not seen them since. To my knowledge, no specific or general actions were taken by the YMCA upon my reports. I have not asked the YMCA about other complaints it has received about cell phone use in the locker rooms, or whether the YMCA is keeping records of these complaints or violations.

As for the latest incident, last Wednesday, March 22, 2006, I find it necessary to relate my experience upon reporting it to the front desk, in part because I was accused by a member of your staff in the presence others of "making threat," which I categorically deny. After showering and dressing, I reported to the front desk at about 7:50 p.m. There were at least four people behind the desk. I asked if I could "speak to someone in charge?" At first, there was a look of puzzlement by all, as there appeared to be no one who knew who was in a supervisory position that evening at the West YMCA. Finally, one young woman approached me and asked if she could help. I do not know her name. I have engaged in brief friendly conversations with her before, and so I was surprised at her reaction in this particular case.

I told this Y staffer about the latest incident in the locker room, along with my former experience, that cell phone use in the locker room was a very serious problem, and that something has to be done by the YMCA about it. She responded that she understood my concern but that the YMCA already had posted a sign inside the locker rooms. I told her I thought that was not enough, because the signs are not conspicuous, one violator told me he was not aware of the sign or the policy, and the violations were obviously continuing. To that she responded that the YMCA could not post staff at all times in locker rooms or put surveillance cameras in the locker rooms. Although I was astonished at this response (as she appeared to have instantly taken a defensive position, concluded that nothing else could possibly be done, and no other reasonable actions might be entertained), I responded that I was not suggesting anything of the sort, but that other measures can be taken, such as posting more conspicuous signs and taking

opportunities to remind members of the cell phone policy. At this point she said I could fill out a comment card, to which I responded this was "not a comment card situation," and it warranted her more serious personal attention to the matter by pledging to report this to her supervisor. She made no such pledge. Somewhat exasperated by the patronizing attitude I was confronted with, I told her I was putting her and the YMCA on notice of this very serious problem, which I expected her to report to people in charge at the YMCA. I told her that people are not going to tolerate violation of the cell phone use rule or the risk of being photographed nude in the locker rooms, that people could wind up in fights over this, and that the YMCA could face potential liability if more is not done by the Y to deal with it after being told about it. At this, the young woman told me I should not "make threats", at which point I told her that was the last thing I was doing, but rather merely trying to convey how serious this matter is. At that I discontinued this futile conversation, resolving to myself to write this letter instead.

I have been a member of the Madison YMCA 1984. I believe I am a respected member of my community and profession, and have the respect and friendship of all YMCA members and staff who know me and with whom I have worked, played and been associated. I have been a participant in YMCA aerobics programs, including floor aerobics, step, kick-boxing, and water aerobics. Since 1984, I have been a regular in the YMCA downtown, Annex and now West Y weight training facilities. I have come to know or be acquainted with YMCA staff, especially aerobics instructors, some YMCA Board members, and other members, not the least of whom was "YMCA Ambassador" Dick Cates, with whom I have shared a long-time professional and personal friendship.

Over the years, I have also sought to contribute to fostering and improving YMCA programs and management, including by helping on my own time and expense to save the last vestiges of the YMCA presence in the downtown, first at Turners Hall, and later at MATC. I was presented with the YMCA Fitness Motivator Award for my efforts to successfully save the YMCA noon aerobics program at Turner Hall until the building was razed. I was a long-time participant in instructor Lynn Lemanski's aerobics classes for well over 10 years, including her present water aerobics class.

I have also attempted to contribute to making the Y a member-friendly organization by bringing to the attention of Y instructors, staff or management, as appropriate and necessary, concerns that both I and other members have had about management issues. In most cases, my concerns or suggestions are offered informally, without writing, by simply mentioning it to staff to handle as a management issue they adopt as their own. This is how I prefer to work with staff and management. Usually, staff are professional and attentive to members' concerns. Only if I believe my concern is being ignored or dismissed without serious attention do I feel the need to raise the issue to a next higher level.

People who know me also know that I am not one to grumble about a problem without giving the subject of my concern a chance to respond to it, and without me offering options to

constructively fix it. I hear many Y members often complain about something at the Y who are not willing to voice it to the Y or offer a suggestion to fix it -- simply because they are uncomfortable with doing so, or they do not want to "rock the boat." Others are not even willing to place a comment in the comment box. Others have chosen to leave the Y rather than to seek a change that would keep them there. Several Y members I have known with serious concerns or problems with Y facilities, management or programs have chosen to leave and go to other health facilities without even letting the Y know why they are leaving. Of course, these courses of action are their right. I do realize that for many people, voicing concern or displeasure is uncomfortable. It is for me, too. But, I believe rules must be enforced, and we risk losing our rights if we do not insist they be protected. Moreover, I do not believe it would be fair to the Y or to the improvement of Y programs if we abandon the Y without speaking up. I have found that when Y management truly listens to members, good things do happen and constructive changes are made that make the Y a better place. I am not one to simply leave if I don't like some things I think I can help improve. Therefore, I offer the following.

The inconspicuously lettered and inconspicuously placed "pro forma" sign inside the door of the West YMCA men's locker room is inadequate for giving effective notice of the YMCA cell phone policy, and it is obviously not sufficient to obtain full compliance with the policy. The sign does not grab the attention of a person entering. I believe if you asked most members whether they were aware of there are signs posted on the policy, many would tell you they are not, or where they are. Regardless, continued cell phone use in the locker room shows that the sign is inadequate for obtaining full compliance.

Therefore, I offer the following suggestions to be considered to remedy the present problem and to obtain compliance with the YMCA's cell phone policy for the effective protection of its members. I believe they are reasonable, although there certainly may be other alternatives worth considering. I would be more than willing to participate in a dialogue regarding this matter in the spirit of constructive solutions to this problem. Nevertheless, I believe the Y should consider them for implementation along with any other reasonable and effective actions. Although it is reported that many gyms around the country have adopted rules prohibiting cell phones in locker rooms, I believe an attempt should be made to obtain compliance with the YMCA's present cell phone use rule before this more drastic rule is considered. I suggest the following, subject to evaluation and suggestions by others:

- Adopt a "no tolerance" rule for violation of the cell phone use rule in the locker rooms, resulting in termination of membership and use of facilities. Once adequate notice of the policy is provided, as suggested below, ignorance of the rule should not be an excuse.
- A procedure for staff to follow to immediately notify proper authorities upon a report of detected camera use in locker rooms in violation of federal law.
- A procedure for staff to follow upon being informed of cell phone use in the locker rooms, for either during or after the incident, including an attempt to determine the identity of

the person who reportedly violated the rule, and a procedure for investigating the matter, including hearing out the alleged violator's side of the story.

- The posting of conspicuous signs and placements on entrances to and in the YMCA locker rooms so as to make it unlikely the claim that persons are not aware of the strict policy, such as red or orange lettered warning signs with a depiction of a crossed out cell phone or person using cell phone. I believe other facilities have designed such signs or depictions.

- The posting of conspicuous signs and placements in the YMCA non-locker room areas, such as at front entrances, front desk, and hallways, giving notice of the strict policy.

- Conspicuous posting of the notice and strict policy in YMCA literature, such as program brochures and schedules.

- Conspicuous posting of the notice and strict policy on the YMCA home web page, with a link to the policy.

- Conspicuous posting of the notice and strict policy in YMCA mailings.

- Oral notice of the notice and strict policy to prospective members of the policy.

- Oral notice of the notice and strict policy to new members at the time membership is dispensed.

- Oral notice of the strict policy during orientations of members and participants in programs.

- Oral notice of the strict policy at the beginning of classes, meetings, and to new members of classes (at least at the beginning of each class session), and intermittently during the session.

- Oral "reminders" to persons observed with cell phones in the YMCA.

- Oral "reminders" to members checking in, at least periodically.

- Oral notice to non-member visiting persons checking into the YMCA.

- A survey of YMCA members to determine cell phone use in locker rooms, their level of concern about this issue to themselves, their children and families, and soliciting their ideas on measures to deal with the issue.

- Placement of a line phone in the locker rooms for undressed persons to contact the front desk to report incidents, such as cell phone use, medical emergencies, or other problems.

- After effective implementation, advertisement of the YMCA as "privacy safe" for families and members.

Thank you for your consideration. I look forward to your immediate attention and response.

Sincerely yours,



Thomas J. Dawson

<http://www.ncsl.org/programs/lis/CIP/CIPCOMM/Spring2004issue.htm#Camera>

2007 National Conference of State Legislatures (NCSL)

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News from the States

This online newsletter is a product of NCSL's Communications, Technology and Interstate Commerce Committee
Spring 2004 edition

Telecommunications

Camera Telephones - A New Invasion of Privacy?

Cellular telephones with photographic capabilities have prompted state lawmakers to consider regulating their use and banning them from certain places. For example, an Iowa bill considered in January 2004 would make it a misdemeanor punishable by a \$100 fine to use a cellular telephone with the camera feature in dressing rooms, locker rooms, or other public places where people disrobe, even if the cellular telephone user does not use the camera. Only a handful of other states - - California, Hawaii, South Carolina, Maryland and Michigan - - have introduced regulatory measures in the state legislatures in 2003 and 2004. However, this topic is certain to receive attention from privacy experts and from representatives of the telecommunications industry in the months ahead. (Submitted by Bob Boerner)



BACK PRINT

Cell Phone Camera Crackdown

WASHINGTON, May 11, 2004

(AP) Cell phone cameras are useful for the unusual moment that demands a picture, like when a congressional aide pulled one out of a pocket to get a snapshot of Michael Jackson strolling the halls of Congress.

Some people, however, are using them for nefarious purposes, such as taking pictures beneath women's skirts and posting them on the Internet. Lawmakers want to make taking such surreptitious photos and other illicit uses of video technology a federal crime punishable by up to a year in jail.

"No one should have to go through the embarrassment of being secretly taped by an electronic peeping Tom, or seeing those pictures turn up on the Internet," said Rep. Mike Oxley, R-Ohio, a former FBI agent who is an advocate for the bill.

While there are no official studies on the intrusive use of camera phones, lawmakers and anti-crime advocates say "video voyeurism" is a serious crime that deserves a serious response by the government.

Simple voyeurism, secretly photographing or videotaping someone in a compromising position or in a private place, already is against the law in most states. The proliferation of tiny cellular telephones that can take pictures silently has facilitated the taking of illicit photos in public places such as grocery stores, sidewalks and restaurants.

In December, a Sammamish, Wash., man pleaded not guilty to a charge of voyeurism after being accused of using a cellular telephone camera to take photographs up a woman's skirt. Jack Le Vu, 20, was released on \$25,000 bail.

A witness told investigators the man pretended to scan a grocery store's shelves as he followed a 26-year-old woman in a supermarket. He periodically crouched with his camera phone extended beneath her skirt and snapped photos.

"Discovering you've been a victim of video voyeurism puts you in fear and unrelenting anxiety, and you are suspicious then everywhere you go," said Susan Howley, public policy director at the National Center for Victims of Crime.

Oxley said he's heard numerous stories "about how individual privacy has been violated in locker rooms, dressing rooms and even homes." And Internet surfers can easily find Web sites with camera phone pictures of those individuals posted for the world to see.

Even when a person finds out about a peeping Tom, the hodgepodge of laws around the nation sometimes let criminal cases avoid prosecution. "Victims will go to the police and be told that 'We'd love to arrest this person, but it's not technically against the law,'" Howley said.

Currently there is no federal law protecting citizens from secret and intrusive videotaping in public places, Oxley said, and some prosecutors have had difficulty making cases.

"That's why we wanted to make a specific crime so there would be no misunderstanding which law applies," he said. "This is a case where the law is trying to catch up with the technology or the misuse of technology."

The bill before Congress would make it illegal to videotape, photograph, film, broadcast or record a naked person or someone in underwear anywhere where a "reasonable person would believe that he or she could disrobe in privacy."

The legislation also would make it illegal to sneak photos of a person's "private parts" when "their private parts would not be visible to the public, regardless of whether that person is in a public or private area."

A person convicted under the law could face a fine and as much as a year in jail.

States already are trying to deal with the problem. Twenty states have laws that cover only secret taping with cameras, and some are modifying them to include camera phones, Howley said.

Iowa, California, Maryland and other states are crafting similar legislation specifically aimed at camera phones, according to the National Conference of State Legislatures.

Iowa's proposal would go further than the federal legislation by making it illegal to have a cellular telephone with a camera feature in dressing rooms, locker rooms or other public places where people disrobe, even if the cellular telephone user does not use the camera.

Camera phones are becoming commonplace in American society, with sales expected to double or even triple in coming years. In 2003, about 6 million camera phones were shipped to the United States, according to Strategy Analytics Ltd. Phones that can take video soon may become just as common.

The bill passed the Senate by voice vote without dissent. The House Judiciary Committee is expected to consider it before the August recess.

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Some Gyms Ban Camera Phones

By Linda Searing

Washington Post Staff Writer

Tuesday, September 23, 2003; Page HE01

Ain't technology grand? Not only can that guy on the stationary bike next to yours at the gym chatter away on his cell phone; now he can surreptitiously photograph you at the same time.

So far, no outrageous misuse of camera-equipped phones has been reported by health clubs in the Washington area. But the phones' potential for mischief is making the devices the targets of concern by gym managers anxious about their responsibilities to members. Already, the gizmos have been banned by a scattering of Washington area health clubs.

The Sports Club/LA on 22nd Street NW forbids using cell phones of any kind in the locker rooms "because of the new technology," specifically those built-in cameras, said spokeswoman Carrie Foster. No incident sparked the ban, she said, just precaution. "We have our fair share of politicians and high-profile Washingtonians . . . and privacy is our No. 1 priority," Foster said.

Thoughts of locker room photos of showing up on the Internet send a shudder through most anyone who frequents a fitness club. But that, and more, apparently has happened elsewhere and has led to the banning of camera phones at fitness clubs in Hong Kong and at bathhouses in Japan, according to reports on Wired.com. The Web site has reported that camera-phone photos taken of naked women in a public sauna in South Korea have shown up on the Internet and that police have arrested people in Japan for using camera phones to take pictures up the skirts of unsuspecting women at train stations.

"This whole thing is really new to the United States," said Shawn Lavin, marketing director for the YMCA of Central Maryland, whose eight facilities recently posted warnings in locker rooms and around swimming pools about stealth photographers, "but it's become an epidemic in other parts of the world -- the U.K., the Orient, Australia." And when Americans hear about it, he said, "they're rather frightened that there are people out there who would use this technology in not-so-flattering ways."

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But most local workout spots haven't gone quite that far -- at least not yet.

At the various Gold's Gyms in the District, for instance, camera phone misuse "hasn't been an issue," said Sean Ratliff, area director. "Our clientele is a pretty professional, educated consumer."

The folks at Bally Total Fitness in South Arlington still allow cell phones but rarely see anyone using one, said Geraldo Martin, sales manager. "But you could always have one person who'd spoil it for the rest," he said.

Complaints about cell phones at Fitness First clubs in the area usually concern people talking too loudly, distracting others, said Steve Morningstar, general manager of the Germantown club. Enough members have complained, he said, that all clubs now restrict cell phone use to the front lobby.

However, no complaints have surfaced about camera phones, said Devin Maier, assistant manager of Fitness First in Bethesda. "We do have celebrities who work out here, a lot of athletes," Maier said, "but they're usually the ones who have those phones." Besides, he said, anyone who wanted to photograph someone surreptitiously "could do the same thing with a normal camera."

*Letter of the Law

And for now, you might be able to do it without fear of major legal repercussions, according to two experts on law and privacy, who say they're aware of no law that would turn surreptitious locker room photography into a criminal act.

"Obviously there should be limitations," said Wayne Madsen, a senior fellow at the D.C.-based Electronic Privacy Information Center, but the problem now is that "technology is outpacing by light years the legislation." A camera-phone victim could file a civil suit, he said, "but criminal action would be hard right now because of the lack of any well-defined legislation that deals with this technology."

Nonetheless, civil suits in such cases may be inevitable, predicted Lawrence Gostin, a law professor at Georgetown University and director of the Centers for Disease Control and Prevention's Center for Law and the Public's Health.

Locker room photography "is an outrageous violation of privacy because people believe themselves to be in a private and intimate setting and in a very compromised and vulnerable position," Gostin said.

And the photographer isn't the only party that could be sued, he said. Not only could victims argue that health clubs have a duty to protect their members' privacy, but that "violation of their privacy was foreseeable if fitness clubs knew about these camera phones, and knew about their use, and knew that other clubs were already banning them."

"If you're walking on the street or are in a public place, I think that you implicitly subject yourself to some kind of surveillance," Gostin explained. "But if you're in a private club, particularly in a locker room, there's a heightened expectation of privacy."

Madsen says it probably will take some type of legal action for laws to catch up to the technology.

"The minute there's a complaint or a lawsuit filed against one of the gymnasiums, then we'll see a reaction by the policymakers," he said -- unless, he ventured, the presence of a camera phone at some Congress member's club prompts quicker action. "This would be the type of thing that would get their attention," Madsen said.

For now, however, warnings posted at the Central Maryland Y's suggest the kind of action more likely. The signs, said Lavin, state in part: "Anyone who's caught taking inappropriate pictures of another person without their permission and knowledge will forfeit their facility privileges."

At other clubs, meanwhile, the operative approach seems to be wait and see.

"What we've decided at this company is that we want to wait and find out what the tempo is within the industry," said Leah Carrubba, general manager of the Columbia Athletic Club. "We've trained our managers on duty to be aware of anyone who has a cell phone with photo ability. . . . Our assumption is that someone would notice" inappropriate picture-taking. Carrubba, who is also board president of the Mid-Atlantic Club Management Association, said that's the tack fitness clubs probably should take at this time.

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Some Gyms Ban Camera Phones

By Linda Searing
Washington Post Staff Writer
Tuesday, September 23, 2003; Page HE01

Ain't technology grand? Not only can that guy on the stationary bike next to yours at the gym chatter away on his cell phone; now he can surreptitiously photograph you at the same time.

So far, no outrageous misuse of camera-equipped phones has been reported by health clubs in the Washington area. But the phones' potential for mischief is making the devices the targets of concern by gym managers anxious about their responsibilities to members. Already, the gizmos have been banned by a scattering of Washington area health clubs.

The Sports Club/LA on 22nd Street NW forbids using cell phones of any kind in the locker rooms "because of the new technology," specifically those built-in cameras, said spokeswoman Carrie Foster. No incident sparked the ban, she said, just precaution. "We have our fair share of politicians and high-profile Washingtonians . . . and privacy is our No. 1 priority," Foster said.

Thoughts of locker room photos of showing up on the Internet send a shudder through most anyone who frequents a fitness club. But that, and more, apparently has happened elsewhere and has led to the banning of camera phones at fitness clubs in Hong Kong and at bathhouses in Japan, according to reports on Wired.com. The Web site has reported that camera-phone photos taken of naked women in a public sauna in South Korea have shown up on the Internet and that police have arrested people in Japan for using camera phones to take pictures up the skirts of unsuspecting women at train stations.

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Letter of the Law

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Are camera phones too revealing?

Locker room snooping, school cheating prompt bans, high-tech protection plans

Carolyn Said, Chronicle Staff Writer
Sunday, May 16, 2004

Call it the law of unintended consequences.

The latest fad in cell phones -- built-in digital cameras and even camcorders -- lets people easily capture snippets of everyday life, but the enormous potential for abuse has businesses and organizations scrambling.

With camera phones, peeping Toms can snap revealing shots in gym locker rooms. Amateur paparazzi can stalk celebrities. Cheating students can peek at test answers. Crooked employees can copy confidential plans. Identity thieves can capture credit card numbers.

Moreover, the ease of beaming photos allows voyeurs to post "up skirt," "down blouse" and other compromising photos on the Internet for all to see.

"Essentially, your camera, your computer and your Internet connection is all in one device," said Alan Reiter, president of Wireless Internet & Mobile Computing, a consulting firm in Chevy Chase, Md. "That's what makes it powerful -- and also makes it scary."

To thwart the snooping, locations like health clubs and high schools are banning the use of camera phones, and sometimes even their very presence. Some companies are developing technology that would block the cameras. And federal and state legislation is in the works that would clamp down on where and how the devices could be used.

To be sure, camera phones yield unexpected positives, too. People have used them to snap the license plates of traffic violators and catch flashers in flagrante delicto. Canadian Security Intelligence agents use camera phones to snap photos of suspicious travelers aboard airplanes and beam them to customs agents on the ground, according to the Edmonton Journal. The BBC has encouraged people to use their camera phones to help chronicle news events.

Still, the reports of abusive use of camera phones have spurred firms and other groups to act.

At Everett Alvarez High School in Salinas, a student was caught using a camera phone during a test. "That was the final catalyst" for tougher rules, said Principal Joe Rice. "A camera phone will not be on my campus anytime in any way because of the potential for abuses."

Club One fitness centers and 24 Hour Fitness, like many other gyms, now ban camera phones.

"If someone were caught using a camera phone (to take photos in the locker room), their membership would be immediately terminated," said Bill McBride, Club One's Northern California director of sales and operations.

Sensitive locations such as Lawrence Livermore Laboratories and Air Force offices that handle classified information also have banned camera phones.

Industrial espionage is another area of possible abuse. Intel Corp. added camera phones to the list of devices prohibited in its product design labs and wafer fabrication facilities. "Any sort of cameras of any nature" are barred from sensitive locales, said spokesman Chuck Mulloy.

California Assemblywoman Sarah Reyes, D-Fresno, said she is worried about privacy abuses but doesn't like the bans.

Instead, she has proposed legislation that would require camera phones sold in California after 2008 to emit an audible noise or flash a light when users press the shutter. Many already do so but have software that lets users turn off the feature.

Keith Nowak, a spokesman for Nokia, the world's largest manufacturer of cell phones, said Reyes' proposed law would penalize people who wanted to take snapshots at weddings, graduations and other events where they "don't want that kerchunking sound."

Nowak said phone companies prefer pending federal legislation -- the Video Voyeurism Prevention Act of 2003 -- because it applies equally to camera phones and other types of cameras. The measure, which passed the Senate by a voice vote last week and soon will go before the House, would make it a federal crime punishable by up to a year in jail to photograph or videotape someone naked or in underwear in places where people have a reasonable expectation of privacy.

"The wireless industry feels that camera phones shouldn't be singled out and should be treated just like any other compact camera," said Travis Larson, a spokesman for the Cellular Telecommunications & Internet Association.

However, cell phone cameras are different from other cameras. Indistinguishable from cell phones and often equipped with a zoom feature, they lend themselves to covert use. Someone can pretend to be chatting or dialing when they're actually taking candid camera shots.

Cell phone companies say the problem lies with a few miscreants, not the technology, and that laws will hurt the vast majority of people who use their camera phones to photograph friends and family.

Cell phones themselves are so commonplace as to be beyond suspicion; about 165 million Americans carry them.

"The more pervasive they become, the more chances that exist for them to be abused," said Albert Lin, director of research at American Technology Research in San Francisco. "They've become the equivalent of your wallet or your keys; you naturally take your cell phone with you pretty much all the time."

This year, about a quarter of the 600 million cell phones sold worldwide will come with cameras, according to InfoTrends Research, which predicts that annual sales of camera phones will pass 650 million in 2008.

Barry Steinhardt, director of liberty and technology for the American Civil Liberties Union, said camera phones "illustrate that the capacity to invade privacy through new technologies is developing at light speed."

Steinhardt thinks the problem is relatively minor and should be addressed through overarching privacy laws -- something the United States has been slow to implement.

Verizon Wireless spokesman Jeffrey Nelson said that bans are too extreme.

"I think people will react to it like they did to Prohibition," he said. "Do you ban a technology or teach people how to use it?"

Camera phone snapshot

Camera phones, which were introduced in Japan four years ago, are quickly becoming ubiquitous. Consider:

- Sales of camera phones overtook stand-alone digital cameras worldwide last year.
- The Yankee Group in Boston estimates that 21 million camera phones will be sold in the United States in 2004, accounting for nearly 1 in 5 phones. Next year, the figures will more than double. In some countries, like Japan, most cell phones now come with built-in cameras.
- U.S. wireless providers began marketing phones last year that can record short video clips, like primitive camcorders.

Source: Chronicle Research

<http://sfgate.com/cgi-bin/article.cgi?f=/c/a/2004/05/16/SPYPHONE.TMP>

This article appeared on page A - 1 of the San Francisco Chronicle

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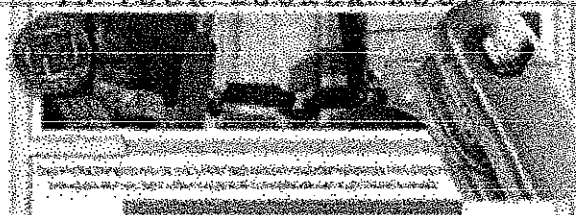
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**CELL PHONE CAMERAS
IN YOUR LOCKER ROOMS?**



**Cell Phone
Cameras in
Your Locker
Rooms?**

Cell phone cameras may be the latest technology-induced headache for facility managers, but are they a true cause for concern or just a lot of media hype?

By Shana McGough, Writer & Online Editor

If not exactly sanctuaries from the world, locker rooms must, at the very least, be a place where your fitness center users feel secure. Most every facility patron will pass through your locker rooms, and because of the extremely personal nature of locker room activities, any actual or perceived violation of the space could cause users to stay away, perhaps even avoiding your facility and its activities altogether. Some events could even lead to legal issues. While there is a long list of issues that could threaten users' privacy and security, the latest buzz is about cell phone cameras.

A little history

As with many technological innovations, the early buzz originated in Asia, as cell phone cameras gained initial popularity in Japan and China. As their use grew, reports of their misuse began to surface, and were picked up by the media and spread to the world via Internet ... much like a photo from a camera phone. Early reports alarmed readers with tales of photos taken under the skirts of unsuspecting women on Tokyo subways. Restrooms and locker rooms as areas of further potential abuse weren't far behind, which means it was only a matter of time before the topic would start landing close to home for fitness facility managers and staff in the U.S.

At Northeastern University, Boston, Mass., Omar Rouhana, office manager of campus recreation, kept his facility ahead of the curve when, in June 2003, he read an online news account of a Hong Kong fitness center that banned cell phones to eliminate the risk camera phones could pose. "I did more research at that time, and no one in the U.S., either a rec center or even a private club, had any policy regarding the use of cell phones equipped with cameras," says Rouhana. After consulting with the director of campus recreation, Rouhana made and posted a sign banning cell phones in Northeastern University recreation facilities as of July 1, 2003.

A *USA Today* article and major network news coverage in Fall 2003 created a nationwide alert to the issue, if not outright alarm, which prompted many university facilities to begin grappling with the issue. Judging from a few recent small-scale surveys, the grappling is ongoing, with many facility managers and directors hungry for more information as to how other facility management teams are tackling the topic, as well as debate about how big of a threat camera phones really pose.

Common approaches

Rec center approaches to camera phones mostly fall into one of two categories. The first approach is motivated by either a "wait and see" attitude, or a reluctance to create a problem where none exists. This approach is characterized by discussion of the issue among managers and staff, usually without an outright change in policy or public acknowledgement of the issue. A second approach uses an outright, public acknowledgement that the problem could occur, and is characterized by posting of signage in locker rooms and the facility, often accompanied by a ban on cell phones within the locker rooms and/or facility.

Addressing, but not publicizing. Rob Jech, facilities coordinator at Ohio State University's main Columbus campus, explains that his staff members are aware of the issue. However, they don't want to be in a position of telling rec center users not to use camera phones in the facility out of concern that it could give people ideas for abuse of the technology. Jech describes the potential problem posed by camera phones as something that will "always be an issue, but not a widespread problem." He says that he hasn't seen or been made aware of any incidents with camera phones in his facility, but acknowledges that there could be incidents of which facility staff and users are never aware. Indeed, no accounts of an actual incident with camera phones in locker rooms surfaced from universities.

San Diego State University (SDSU) Campus Recreation Director Eric Huth concurs with Jech's point, saying, "I think we have to be realistic about this perceived problem. We don't want to ban all cell phones from entering our facilities -- that would prevent many students from coming in. And even if we wanted to ban them, we couldn't search every student/member/patron who enters our facilities ... but we can have strong penalties (legal action? lengthy suspensions? threat of expulsion?) if students are caught using a camera cell phone in the showers/saunas/restrooms/locker rooms. And we can have a strong staff presence in those facilities to discourage their use, too."

In an email survey of 12 university rec center operators conducted in January 2004, seven of the respondents share this approach. Major concerns include the difficulty of enforcement, not wanting to create new policies in a reactionary way, the "extreme minority" of people who would abuse the technology, lack of staff to police a new policy and fear of encouraging the camera's use by banning them. Additionally, many respondents feel that current policies prohibiting unauthorized photographs cover any issues that camera phones might pose. Some facilities also reworked or broadened existing policies to ensure that camera phones were covered.

Written policies. Ohio State's Jech says that his facility has a "rights and responsibilities document that's been around for a while [that provides] standards of conduct" for facility users. In January 2004, his facility's staff revised and updated the document and standardized all procedures for the university's various facilities, programs and rec center staff. The phrase in the document relevant to camera phones reads, "The unauthorized use of video recording devices and photography is prohibited in all recreation sports facilities." It was important that the statement be broad enough to cover existing and future

technologies, Jech explains, pointing out that "there will be something else that comes up," and that they wanted the document changes to "cover the next five to 10 years." To ensure the accurateness and legality of the document, a university recreation sports committee and university legal services reviewed the document and made suggestions and changes as needed.

San Diego State's Huth explains that camera phone abuse is covered under several of SDSU rec facility's rules, including one banning use of "still photograph cameras, stereo boombox radios, video tape camera/machine, cell phone and/or PDA cameras, television camera or movie camera use" inside the rec center. But he further points out that camera phone abuse violates the center's standards of conduct (which partially states, "When individuals agree to join the ARC or purchase a day pass, the person indicates, by their registration, that they agree to act courteously, cooperate with staff and display good behavior"). Camera phone abuse also violates the center's Offensive Words & Actions rule (which includes the provision, "Such actions could include, but are not limited to, any activity that might reasonably bring embarrassment or emotional, psychological or physical harm to an individual, or might degrade or otherwise compromise the dignity of an individual."). The rules also spell out disciplinary measures, which include possible official SDSU Judicial Proceedings, punishment from San Diego Law Enforcement officials, expulsion from the facility and suspensions from one day to one year or more.

The ban approach: Facilities that choose to directly tackle the problem generally decide to ban phone use outright from their locker rooms and/or facilities. Rouhana explains, "We went ahead and banned the use of cell phones in the facility in general (we did not want to differentiate between camera phone or not). All participants liked the idea from day one. A lot of them were being annoyed by people working out next to them and talking on the cell phone about what they did the night before, and so forth. We have two signs in our facility, one is a 24-by-36 sign, placed in the entrance of our facilities [explaining the cell phone ban], and the other is just a cell phone with a big red X on it and the wording, 'Please turn off your cell phone beyond this point,' which is placed at the entrance of our three facilities. We are not shy in advertising the policy, and we want our users to be on the lookout, as well as be aware that their picture could/might be taken and placed on the Internet if we did not enforce our policy."

Of the 12 universities surveyed, only one bans cell phone use in its rec center, but another was ready to do the same if a problem emerged. One university bans cell phones for staff members only (another university pointed out that they couldn't ban cell phones precisely because staff use them within the facility as part of normal operations). Cal Poly University, San Luis Obispo, Calif., (not included within the 12 surveyed) bans cell phones from its locker rooms with a sign reading, "This is a cell phone- and camera-free zone." The rationale for this, explains Greg Avakian, coordinator of aquatics & safety programs, was that "this way, we aren't accidentally accusing a participant in the locker room who is on a regular cell phone of taking pictures, etc. We don't have a lot of young children to worry about, but [we] want to avoid the possible scenario of a disgruntled student taking compromising photos of a professor that they or a friend had a grievance with. We still have some concerns regarding our pool deck, since it looks like MTV Spring Break out here, but [we] don't feel that we can regulate cell phone use outside."

The power of staff

A final approach that seems to incur additional benefits, used by both facilities instituting a ban and those adopting a more cautious approach, is using staff to monitor the situation and patrol locker rooms to a greater degree. This also provides an effective deterrent simply by having a stronger staff presence throughout the facility.

At Ohio State, Jech recently implemented a procedure of having student staff institute periodic checks in the locker rooms. The checks initially were done on an hourly basis, as staff level permitted, but Jech says they will experiment with the interval to determine what is most efficient. Staff are not specifically checking for the presence of camera phones; rather, the idea is to have staff members take ownership of the locker rooms, so that they care as much about their upkeep as the patrons. Among the things staff check for are adequate supplies, cleanliness, safety hazards, and any suspicious people or activities — which is motivated more toward theft prevention, but can also encompass camera phones and other rule-breaking activities. Having a stronger staff presence in the locker rooms also makes staff more visible to patrons, thus increasing opportunities for interaction, which has the side benefit of improved customer service in addition to cleaner, safer locker rooms.

Address the issue

Regardless of how your rec center staff and managers choose to address the risk of camera phones in your locker rooms, a few things seem clear: Addressing the issue and deciding on a united approach is wise, and can only help your facility be prepared. As Boise State University's Lisa Stuppy, assistant director of fitness programs, says, "I think what's great about this topic is that campus recreation folks and fitness facility owner/managers are being proactive in their approach." Finally, student staffers and even patrons are your eyes and ears within a facility, so be sure you're building relationships and using them to the fullest advantage — the payoffs in the form of improved customer service and stronger staff/patron bonds will only help your facility to prosper. EM

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